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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,971	01/25/2002	Larry Blake	TEKIA.004A	3885
20995	7590	06/21/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			WILLSE, DAVID H	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			3738	

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,971

Applicant(s)

BLAKE ET AL.

Examiner

Dave Willse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-74, 220 and 221 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-74, 220 and 221 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Regarding the Form PTO-1449 (single page) received on July 3, 2003, no other pages associated with the Information Disclosure Statement are present in the file, and there is no indication that any fee set forth in § 1.17(p) was submitted or charged. This is likely the fault of the Patent Office, but since the instant Office action is non-final, the Applicant may simply re-submit the Information Disclosure Statement (37 CFR 1.97(c)) along with the fee authorization or provide evidence that a statement (if such exists) specified in 37 CFR 1.97(e) was attached to the papers received on July 3, 2003.

The abstract of the disclosure is objected to because it should be in the form of a single paragraph. Correction is required (MPEP § 608.01(b)).

The Applicant has failed to specifically point out the support in the original disclosure for the sentence added to the end of the paragraph at page 9, lines 22-27, of the specification and for claims 220 and 221, presented in the Preliminary Amendment of May 24, 2002 (MPEP § 714.02) and must do so in response to the present Office action.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-11, 13, 15-22, 27-30, 32-48, 50, 52-59, 64-67, 69-74, and 221 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Poler, US 4,434,515. The embodiment of Figures 10 and 11, for example, includes V shaped elements each having a pair of legs (e.g., elements **48b** and **48c**) and rounded and square corners. Several contact points are involved (column 3, lines 41-43; column 5, lines 1-15; etc.).

Regarding claim 5 and others, Figures 10 and 11, for example, illustrate cleats **18-21** and **18'-21'** and apertures **16-17** and **16'-17'**. Regarding claim 20 and others, the attachments are asymmetrical with respect to the plane bisecting the optic and perpendicular to the optical axis, because the attachment features are complementary rather than "mirror images" about said plane. Regarding claim 22 and others: column 5, lines 60-65. Regarding claim 27 and others: column 6, lines 1-3. Regarding claim 28 and others: column 5, lines 65-68, and MPEP § 2113. Regarding claims 32-35 and others: column 5, lines 28-35.

Claims 12, 14, 23-26, 31, 49, 51, 60-63, 68, and 220 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poler, US 4,434,515. Regarding claim 12 and others, tinted eyelets and cleats would have been obvious to the ordinary practitioner (if not inherent from the selected polyimide) in order to reduce glare. Official notice is taken that the particular materials identified in present claims 23 and 24, along with the physical property ranges set forth in claims 25, 26, and 31, were well known in the art for haptics and would have been obvious, if not inherent, from the preferred characteristics listed at column 5, line 63, and elsewhere in the Poler patent. Regarding claim 220, Poler is largely silent as to the features of the optic **10**, but selecting an optic of silicone or polyHEMA, for example, would have been obvious because these types of optics, having

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a broad range of corrective powers, were readily accessible to one of ordinary skill at the time of the instant invention and possess advantages as to biocompatibility, softness, etc.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 4,463,458:	Figures 1 and 3;
FR 2 728 458 A1:	drawings; abstract;
FR 2 728 459 A1:	drawings; abstract.

The Applicant's remarks have been reviewed but are deemed to be moot in view of the new grounds of rejection. The examiner is unable to find any "Exhibit A" among the papers received on July 3, 2003. The Declaration by Dr. Charles D. Kelman has also been considered. It is noted that the language "a V-shaped haptic" is nowhere to be found in either of Applicant's claims 1 and 39. If the Applicant wishes to continue to place emphasis on the interpretation of claimed terms like "V"-shaped element (e.g., claim 1, line 4) in response to the grounds of rejection presented above, then it is recommended that the Applicant follow the procedure outlined in MPEP § 2111.01; pursuant to 35 U.S.C. § 112, 2nd paragraph, "[i]t is applicant's burden to precisely define the invention, and not the [examiner's]" (*In re Morris*, 127 F.3d 1048, 1056, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is (703) 308-2903. The examiner can normally be reached Monday through Thursday and often on Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on (703) 308-2111. The fax phone

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number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Dave Willse
Primary Examiner
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